

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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LUCIO CELLI,

Plaintiff,

ANSWER

-against-

15 Civ. 3679 (JG)(LB)

MR. RICHARD COLE, MS. ANNE BERNARD,
NEW YORK CITY DEPARTMENT OF
EDUCATION,

Defendants.

-----X
Defendants by their attorney, **ZACHARY W. CARTER**, Corporation Counsel of
the City of New York, as and for its answer to the Complaint, respectfully alleges as follows:

1. Deny knowledge or information sufficient to form a belief as to the truth
of the allegations set forth in the paragraph preceding paragraph “1,” and paragraph “1,” of the
Complaint except admit that plaintiff purports to proceed as set forth in these paragraphs.

2. Deny the allegations set forth in paragraph “2,” of the Complaint except
admit that plaintiff purports to proceed as set forth in this paragraph.

3. Deny the allegations set forth in paragraph “3,” of the Complaint.

4. Deny knowledge or information sufficient to form a belief as to the truth
of the allegations set forth in paragraph “4” of the Complaint except admits that plaintiff is or
was employed by the New York City Department of Education (“DOE”).¹

5. Deny the allegations set forth in paragraph “5” of the Complaint except
admit that plaintiff purports to proceed as set forth in this paragraph.

¹ DOE is formally the Board of Education of the City School District of the City of New York.

6. Deny the allegations set forth in paragraph “6” of the Complaint except admit that plaintiff purports to proceed as set forth in this paragraph.

7. Deny the allegations set forth in paragraph “7” of the Complaint except admit that plaintiff purports to proceed as set forth in this paragraph.

8. Deny the allegations set forth in paragraph “8” of the Complaint.

9. Deny the allegations set forth in paragraph “9” of the Complaint.

10. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “10” of the Complaint.

11. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “11” of the Complaint except admit that the United State Equal Employment Opportunity Commission (“EEOC”) apparently issued a Right to Sue letter for charge number 520-2015-00944, and respectfully refer the Court to the Complaint and the document which is annexed thereto as Exhibit “A,” for a complete and accurate statement of their contents.

12. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “12” of the Complaint except admit that the EEOC apparently issued a Right to Sue letter for charge number 520-2015-00944, and respectfully refer the Court to the Complaint and the document annexed thereto as Exhibit “A,” for a complete and accurate statement of their contents.

13. Deny the allegations set forth in paragraph “13” of the Complaint, except admit that plaintiff’s teaching was observed, that he received an unsatisfactory rating (“U Rating”), that there was an appeal of that rating, that a hearing was held concerning that rating,

that the rating was upheld on appeal, and that plaintiff purports to proceed as set forth in this paragraph.

14. Deny the allegations set forth in paragraph “14” of the Complaint except admit that plaintiff purports to proceed as set forth in this paragraph.

15. Deny the allegations set forth in paragraph “15” of the Complaint.

16. Deny the allegations set forth in paragraph “16” of the Complaint except admit that plaintiff’s teaching was observed, that he received a U Rating, that plaintiff appealed the U Rating, that there was a hearing on that appeal, and that the U Rating was upheld on appeal, and move to strike any mention of any settlement discussions.

17. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “17” of the Complaint except admit that the EEOC apparently issued a Right to Sue letter for charge number 520-2015-00944, and respectfully refer the Court to the Complaint and the document annexed thereto as Exhibit “A,” for a complete and accurate statement of their contents.

18. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “18” of the Complaint except admit that the EEOC apparently issued a Right to Sue letter for charge number 520-2015-00944, and respectfully refer the Court to the Complaint and the document annexed thereto as Exhibit “A,” for a complete and accurate statement of their contents.

19. Deny the allegations set forth in paragraph “19” of the Complaint, except admit that Emolior Academy is a school operated by DOE, that Emolior Academy is located at 1970 West Farms Road, Bronx, New York 10460, that plaintiff’s teaching was observed, that he received an unsatisfactory rating (“U Rating”), that there was an appeal of that rating, that a

hearing was held concerning that rating, and that the rating was upheld on appeal, and respectfully refer the Court to the cited documents for a complete and accurate statement of their contents.

- 20. Deny the allegations set forth in paragraph “20” of the Complaint.
- 21. Deny the allegations set forth in paragraph “21” of the Complaint.
- 22. Deny the allegations set forth in paragraph “22” of the Complaint.
- 23. Deny the allegations set forth in paragraph “23” of the Complaint.
- 24. Deny the allegations set forth in paragraph “24” of the Complaint.

AS AND FOR A FIRST DEFENSE

- 25. The Complaint fails to state a claim upon which relief may be granted.

AS AND FOR A SECOND DEFENSE

- 26. The Court lacks subject matter jurisdiction, in whole or in part, over the Complaint.

AS AND FOR A THIRD DEFENSE

- 27. The Complaint is barred, in whole or in part, by the failure to perform all conditions precedent to suit or to exhaust all administrative remedies or both.

AS AND FOR A FOURTH DEFENSE

- 28. The Complaint is barred, in whole or in part, by the applicable statute of limitations.

AS AND FOR A FIFTH DEFENSE

- 29. Defendants are shielded from suit by the doctrines of absolute immunity, qualified immunity, common law immunity, judicial immunity, or any combination of these doctrines.

AS AND FOR A SIXTH DEFENSE

30. Individual defendants are not subject to suit under Title VII and therefore they should be dismissed from this action.

AS AND FOR A SEVENTH DEFENSE

31. At all times relevant to the acts alleged in the Complaint, defendants' conduct was reasonable, proper, lawful, constitutional, made in good faith for nondiscriminatory, legitimate, business reasons, and without malice or without willful intent to violate any applicable law, rule or regulation.

AS AND FOR AN EIGHTH DEFENSE

32. The damage claims contained in the Complaint are barred, in whole or in part, by the failure to mitigate damages.

AS AND FOR A NINTH DEFENSE

33. The Complaint's request for punitive damages is barred, in whole or in part, because punitive damages are not available against a government or a governmental subdivision.

AS AND FOR A TENTH DEFENSE

34. Any damages sustained by plaintiff were caused by plaintiff's own negligent or otherwise culpable conduct.

CONCLUSION

WHEREFORE, defendants respectfully request that the Complaint be dismissed in its entirety, that the Court enter judgment for defendants and that defendants be granted costs, fees, and expenses together with such other and further relief as the Court deems just and proper.

Dated: New York, New York
December 31, 2015

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

LUCCIO CELLI,

Plaintiff,

-against-

MR. RICHARD COLE, et al.,

Defendants.

ANSWER

ZACHARY W. CARTER

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New York, New York 10007-2601

Of Counsel: Michael Nacchio

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Law Dept. No.: 2015-047153

Service of which is hereby acknowledged:

....., N.Y., Dated:

Signed:

Attorney for: